In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4229 of 2002 (O&M)
Date of Decision: 24.09.2007

Balbir Chand and others

…Appellants

Versus

The State of Haryana and others

….Respondents

Present : Mr.L.N.Verma, Advocate

for the appellants.

Mr.Amit Kaushik, AAG, Haryana for respondents No.1 and 2.

Mr.C.B.Goel, Advocate with Mr.Dheeraj Lather, Advocate

for respondents No.3 and 4.

This Regular Second Appeal has been filed against the judgment and decree passed by the learned lower Appellate Court dismissing the suit for declaration and injunction filed by the plaintiff-appellant.

The plaintiff-appellant filed a suit for declaration and permanent injunction claiming themselves to be the owners in possession in pursuance to the allotment order dated 30.5.1984. It was pleaded that by way of order dated 29.8.1980, the land measuring 377 Kanals, 18 Marlas was declared surplus which includes the land in dispute. It is the admitted position that the order dated 29.8.1980 was challenged by the land owner before the learned Commissioner and the said appeal was ac`cepted and the case was remanded back to the learned Collector to decide the matter afresh.

By way of order dated 13.12.1983, learned Collector again upheld the order declaring the area as surplus. The learned Collector vide order dated 29.8.1980 was pleased to give liberty to the land-owners to

move an application within the stipulated period for selection of land. It was also mentioned therein that if there was any area of the land declared surplus under the Panchayat Act that would be declared surplus as such.

The case set up by the plaintiff in the plaint was that alongwith order dated 29.8.1980, Form IV was also issued by the department declaring 377 Kanals 18 Marlas which includes the land in dispute to be surplus. It was also claimed by the plaintiff that the same was allotted to the plaintiffs and they had deposited necessary installments and thus became owners in possession of the land in dispute under the provisions of Section 15(5) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the 'Act'). The mutation Nos.993, 995 and 941 were also said to have been decided in favour of the plaintiffs. The plaintiffs claimed that except the order dated 29.8.1980, no other order was passed by the learned Collector declaring the area to be surplus.

The plaintiffs claimed that after the death of Abhimanyu- the land owner, an intimation was sent to defendant No.2 on 27.11.1992 and in absence of any order in routine manner, the said application was forwarded to defendant No.3 for entering the mutation of land in dispute in their favour. The plaintiff claimed in the plaint that it was on the basis of said intimation, that Mohinder Gupta-the successor of the land owner, got the warrant of possession which necessitated the filing of the suit for declaration and injunction. The Form IV issued on the basis of selection made by the land owner, was also challenged primarily on the plea that Form IV was changed under political pressure at the request of Abhimanyu-the original land owner.

The plaintiff claimed that Form IV had no validity because order dated 29.8.1980/28.8.1980 stood merged into the order of Financial Commissioner. The claim of the plaintiff-appellant, therefore, was that they were entitled to decree declaring themselves to be owners in possession of land measuring 66 Kanals, 6 Marlas.

On notice, the suit was contested wherein defendants No.1 and 2 filed a joint written statement whereas defendant No.3 filed a separate written statement. The objection was taken that the suit filed was time barred. It was also claimed that the area in dispute was held to be permissible area of the land owners and therefore, could not be allotted to any person. It was also claimed that the orders dated 8.2.1984 and 31.1.1986 had attained finality as the same have not been set aside by any Court till date. The jurisdiction of the Civil Court to entertain and try the suit, was also challenged in view of the bar under Section 26 of the Act. Defendant No.3, who was an affected party, filed a written statement wherein, identical objections were raised. After filing of the replication, the following issues were framed by the learned trial Court:-

"1. Whether the plaintiffs are owners in possession of the land in question, being old tenants & allottees from the surplus area? OPP.
2. Whether the suit is barred as the allotment was cancelled vide order dated 2.8.1984 as alleged? OPP
3. Whether the civil Court has no jurisdiction to try the suit? OPD.
4. Whether the suit is barred by time to file the present suit? OPD.
5. Relief."

Mr.L.N.Verma, learned counsel appearing for the appellants, challenged the judgments and decrees passed by the learned courts below by contending that the allotment in favour of the plaintiffs, was made vide order dated 30.11.1981 and in pursuance thereto, all the installments were deposited and therefore, the plaintiffs have become owners of the land in dispute by virtue of Section 15(5) of the Act.

It was also contended by learned counsel for the appellants that the learned courts below have completely misread the pleadings and evidence brought on record by proceeding on the presumpton that Form IV dated 8.2.1984 was a fresh order of declaration and therefore, the plaintiffs had no right or title in the land in dispute as under the said order the area in dispute was included in the permissible area of the land owners.

The contention raised by the learned counsel for the appellants cannot be accepted as the case sought to be argued was not the case set up in the plaint. The reading of the plaint shows that the case set up by the plaintiff-appellants was that they were allotted the land on 30.5.1984. In view of this, it could not be believed or accepted that the allotment in favour of the plaintiff-appellants was made vide order dated 30.11.1981 as was sought to be pleaded. It was also wrong on the part of the appellants to contend that order dated 7.2.1984 was an order of fresh selection. The plaintiff-appellants themselves placed reliance on the order Exhibit P-1 dated 29.8.1980. The reading of the said order itself shows that the liberty was given to the landowner to select the permissible area. It is also not in dispute that order dated 29.8.1980 was set aside and on remand, order was passed on 3.12.1982 vide which the order earlier passed was upheld that is to say that no change was made in the surplus area. Thus it could be safely

said that after passing order on 3.12.1982, the land owner was to select his permissible area which was done and in pursuance thereto, Form IV was issued on 8.12.1984. Thus, the findings of learned Courts below on Issue No.1 that the plaintiffs failed to prove their ownership are upheld. On the basis of the revenue entries, the learned trial Court was also right in coming to the conclusion that the plaintiffs were in possession of the property in dispute.

Learned counsel for the appellant also challenged the findings recorded by the learned Courts below on Issue Nos.3 and 4 on the ground that order Exhibit D-2 vide which the land owner has been permitted to select his permissible area was in fact, passed in violation of statutory provisions contained in the Act and therefore, the jurisdiction of the Civil Court to entertain and try the said order could not be barred. In support of this contention, learned counsel for the appellants placed reliance on the judgments of this Court in the cases of **State of Haryana vs. Vinod Kumar, 1986 PLJ 161 (F.B) and Ran Singh v. Gandhar Co-op. Society, 1975 PLJ 162 (F.B.)** and the judgment of the Hon'ble Suprme Court in case of **Bhagwanti Devi vs. State of Haryana, 1994 S.C. 1869.** This contention of the learned counsel for the appellants cannot be accepted as the order Exhibit D-2 was passed as per provisions of the Act and there was no violation either of any provision or the rules and regulations. The order could not be said to have been passed in violation of principles of natural justice. The order Exhibit P-1 which is the basis of the plaintiff's claim itself permitted the land owner to select his permissible area. It has been brought on record that the land owner selected his permissible area only once and it was on the basis of selection made by him that Form IV was

issued. Thus, the learned Courts below were right in coming to the conclusion that Civil Court has no jurisdiction to entertain and try the suit challenging Form IV issued by the competent authority i.e. Collector. However, there is force in the contention raised by learned counsel for the appellants that the Courts below were not justified in holding the suit to be time barred. It has to be noticed that the plaintiffs had filed a suit for declaration claiming their ownership on the basis of alleged allotment made in their favour. It was also pleaded in the plaint that the cause of action has accrued to the plaintiffs only when warrant of possession was taken by the successor of the landowner and the suit was thereafter immediately filed. The Court was to see the limitation from the date of cause of action specifically when the plaintiff was not a party to the order permitting the landowner to select his permissible area. The plaintiff-appellants however cannot take any benefit of the reversal of the finding of learned courts below on issue No.4, as the Courts below besides holding the suit to be time barred, had adjudicated the matter on merits. Once the findings on Issue Nos.1 and 3 are being affirmed, there is no merit in the present appeal and thus the substantial questions of law as framed by this Court while admitting the appeal do not arise for consideration in the present case which are as under:-

i) Whether once the order dated 29.8.1980 passed by the Collector having attained finality and without any fresh order in the surplus area case of the land owner having been passed, fresh Form IV could not be prepared and no change in Form IV already prepared under order dated 29.8.1980 could be made?

ii) Whether Form IV dated 8.2.1984 cannot be treated as an order of the Collector merely because it has been signed and dated by the Collector?

iii) Whether the land in dispute declared surplus vide order dated 29.8.1980 can be deemed to have been deleted from the surplus pool on the basis of fresh Form IV dated 8.2.1984 having been prepared on the mere application of the landowner and without there being any order passed by any authority ordering the exclusion thereof from the surplus pool?

iv) Whether the suit could not be held beyond the Civil Court jurisdiction treating Form IV dated 8.2.1984 as the order of the Collector?"

As order dated 29.8.1980 was set aside by the appellate Court and on remand, a fresh order in the same terms was passed, Form IV dated 8.2.1984 was in continuation of order declaring surplus area on 29.8.1980/13.12.1983 which specifically permitted the landowner to select the permissible area. The Form IV dated 8.2.1984 was not prepared on mere application of the landowner but in terms order of Annexure P-1 which stood affirmed on 13.12.1983. Therefore the Civil Court jurisdiction to challenge the order of Collector declaring surplus area was specifically barred.

No ground is made out to interfere with the impugned orders, which may call for interference by this Court in this Regular Second Appeal.

Dismissed

[**Vinod K.Sharma**]

Judge

24.9.2007

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